

REMARKS/ARGUMENTS

Claims 1 through 20 are pending in the application. Claims 1, 9, 15, and 16 are the independent claims. Claims 2 through 8 depend from claim 1. Claim 10 through 14 depends from claim 9. Claim 17 through 20 depend from claim 16.

Applicants express appreciation that claims 16 through 20 are allowed. Applicants note receipt of the Reasons for Allowance in the pending Action for allowed claims 16 through 20. Applicants respectfully submit that claims 16 through 20 of the instant application are allowable for the reasons set forth in the specification, and that any statements made by the Office which differ from the applicants' form no basis for allowance nor forms any limitation in the construction of the allowed claims.

In the Office Action, claims 6 and 14 were objected to under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that the application regards as the invention. Specifically, the Office contends that the use of the term "LYCRA" only identifies the source of the material and not the material itself. Applicants have amended claims 6 and 14 solely to correct the offensive term and to further render the claims definite. No new matter has been added. Reconsideration and withdrawal of the 35 U.S.C. § 112, second paragraph rejection of claims 6 and 14 are respectfully requested.

In the Office Action, claims 1 through 8 were objected to as having a number of informalities. Specifically, in claims 1, and 2, the location of the perforations is alleged by the Office as being unclear. Applicants respectfully submit to the Office that the applicants are entitled to the broadest interpretation of claims 1 and 2 possible, and are not limited to any specific location, and are not required to further limit the claims as requested by the Office. Applicants contend that claims 1 and 2 are definite and the claimed location may be any location. Reconsideration and withdrawal of the objection to claims 1 and 2 are respectfully requested. The Office further objected to claim 9, as the element "position" should be amended to read "positioned" due to a typographical error. Applicants have so amended claim 9. Reconsideration and withdrawal of the objection to claim 9 are respectfully requested.

In the Action, claims 1 through 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 6,306,006 to Cheng (hereinafter "Cheng"). Applicants respectfully traverse the rejection of independent claim 1 on the grounds that Cheng does not disclose all of the elements of claim 1.

Claim 1 provides for a brassiere for supporting a wearer's breasts that has a pair of breast cups with each breast cup connected to a central panel. The central panel is between the pair of breast cups. The brassiere has a pair of side panels with each connected to a separate one of the breast cups. The breast cups have a first fabric layer, a second fabric layer and a third fabric layer. The

third fabric layer is between the first fabric layer and the second fabric layer.

The third fabric layer provides breathability to the wearer's breasts and support to the pair of breast cups. The third fabric layer has a first side and a second side with the third fabric layer having perforations in a location of the third fabric layer.

Cheng discloses a pad. The pad is a elastic light weight foam material, not any fabric layer. (See column 2, line 34). The pad is not any part of the breast cup and is in fact a separate member that is applied to a breast cup. The pad has an upper and a lower surface. A number of apertures each having a uniform size and cross section are disposed through the pad and the foam pad has a preset shape.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. See Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Cheng does not disclose or suggest any breast cups having a first fabric layer, a second fabric layer and a third fabric layer. Cheng does not disclose or suggest any third fabric layer between the first fabric layer and the

second fabric layer with the third fabric layer providing breathability to the wearer's breasts and support to the pair of breast cups, let alone any third fabric layer having a first side and a second side with the third fabric layer having perforations in a location of the third fabric layer.

In contrast, Cheng discloses a foam pad that is separate and apart from the breast cups, and is in fact connected to the formed breast cups. (See column 2, line 14). In fact, the foam pad has a preset shape and Cheng further discloses that the pad is not any fabric layer, but instead is a elastic foam material connected to the formed breast cups. Reconsideration and withdrawal of the rejection of claim 1 are respectfully requested. Claims 2 through 8 are patentable as these claims depend from claim 1.

Claim 9 provides for an article of clothing for covering a wearer's breasts that has a first breast cup, a second breast cup and a spacer fabric layer. The spacer fabric layer is disposed on an outer layer of fabric when the article of fabric of clothing is positioned on the wearer and the spacer fabric layer is positioned between the outer fabric layer and the wearer's breasts. The spacer fabric layer provides breathability to the wearer's breasts, and has a first side and a second side with the spacer fabric layer having perforations on a location of the spacer fabric layer.

Cheng does not disclose or suggest any spacer fabric layer, let alone one on an outer layer of fabric when the

article of fabric of clothing is positioned on the wearer and positioned between the outer fabric layer and the wearer's breasts.

In contrast, Cheng discloses an elastic foam pad having uniform apertures, not any spacer fabric layer. The elastic foam is connected to the formed breast cups of the brassiere and has a preset shape. Reconsideration and withdrawal of the rejection of claim 9 are respectfully requested. Claims 10 through 14 depend from claim 9 and are patentable for at least the reasons discussed above for claim 9. Reconsideration and withdrawal of the rejection of claim 10 through 14 are respectfully requested.

Independent claim 15 requires an article of clothing for covering over a wearer's breasts that has a first fabric layer, a second fabric layer, and a spacer fabric layer enclosed between the first fabric layer and the second fabric layer. The spacer fabric layer has a pattern with the pattern being visible through at least one of the first fabric layer and the second fabric layer and the pattern is disposed on a first location with the first location corresponding to a second location where the wearer's breasts lay.

Cheng does not disclose or suggest any spacer fabric layer, let alone one enclosed between the first fabric layer and the second fabric layer. In contrast, Cheng discloses a pad connected to the formed breast cups. Cheng discloses that the pad is an elastic foam material, and not any spacer fabric layer. Moreover, Cheng does not disclose or suggest any spacer fabric layer having a pattern, let

alone any pattern visible through at least one of the first fabric layer and the second fabric layer or any pattern on a first location corresponding to a second location where the wearer's breasts lay. In fact, Cheng discloses that the pad has a preset shape suitable so as to not be disfigured. Clearly, Cheng does not disclose applicants' spacer fabric layer. Reconsideration and withdrawal of the rejection of claim 15 are respectfully requested.

In the Action, claims 9 through 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,154,659 to Gluckin (hereinafter "Gluckin"). Applicants respectfully traverse the rejection of independent claim 9 on the grounds that Gluckin does not disclose all of the elements of claim 9.

Claim 9 discloses an article of clothing for covering a wearer's breasts. The article has a first breast cup, a second breast cup with the first breast cup and the second breast cup having an outer layer of fabric. The article also has a spacer fabric layer on the outer layer of fabric when the article of fabric of clothing is positioned on the wearer with the spacer fabric layer positioned between the outer fabric layer and the wearer's breasts. The spacer fabric layer provides breathability to the wearer's breasts and has a first side and a second side with the spacer fabric layer having perforations on a location of the spacer fabric layer.

Gluckin discloses a brassiere that has a brassiere cup and a brassiere side panel. Both are made from partially molded and non-molded material. The brassiere cup and a

brassiere side panel each are made from a fabric material and a plastic film. The plastic film is heated and then applied to the fabric material by rollers. Decorative shapes may then be cut into the brassiere by a die cutting device.

Gluckin does not disclose or suggest any article with a spacer fabric layer disposed on the outer layer of fabric when the article of fabric of clothing is positioned on the wearer with the spacer fabric layer positioned between the outer fabric layer and the wearer's breasts, let alone any spacer fabric layer that provides breathability to the wearer's breasts, let alone with any such perforations.

In contrast, Gluckin simply discloses a brassiere having a fabric material and a plastic film connected to the fabric material, not any spacer fabric layer, let alone one arranged as claimed. Reconsideration and withdrawal of the rejection of claim 9 are respectfully requested. Claims 10 through 14 are patentable for at least the reasons discussed above for claim 9, and reconsideration of the rejection of these claims is requested.

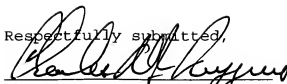
It is applicants' belief that claims 1 through 20 are all in condition for allowance. Accordingly, applicants respectfully request favorable consideration and that the application be passed to allowance.

Serial No.: 10/782,370  
Group Art Unit No.: 3765

Dated:

*January 19, 2005*

Respectfully submitted,



Charles N.J. Ruggiero, Esq.  
Registration No. 28,468  
Attorney for applicants  
Ohlandt, Greeley, Ruggiero  
& Perle, L.L.P.  
One Landmark Square  
Stamford, CT 06901-2682  
Tel: (203) 327-4500  
Fax: (203) 327-6401